Review of Maine's Oil Discharge Reporting Statutes and Regulations

Prepared for the Maine Legislature's Standing Committee on Natural Resources
By the Bureau of Remediation & Waste Management,
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1. Introduction

This study and report are in response to a request from the Maine Legislature's Joint Standing Committee on Natural Resources. In a June 6, 2005 letter (Appendix A) to Maine Department of Environmental Protection Commissioner, Dawn R. Gallagher, the Department was asked to establish a focus group to review oil discharge reporting issues during a work session last year before the Natural Resources Committee. More specifically, the Department was asked to review "the issue of setting different reporting requirements for those facilities that have an SPCC plan in place that meets federal requirements." The Department approached the use of the focus group concept as an efficient means to obtain public input and specific suggestions for its consideration in the development of this report and its recommendations to the Committee. Since only larger (>1320 gallon) above ground oil storage tank (ASTs) facilities are required by federal Environmental Protection Agency (EPA) regulations to maintain a Spill Prevention, Control and Countermeasures (SPCC) plan, the scope of this report is limited to these same AST facilities and their discharges.

The Department's goal in selecting members to invite to participate in the focus group was to ensure a diverse group with fairly equal representation from the regulated community, and environmental and public interest groups. Invitees ranged from the paper industry, the oil distribution sector, Bangor International Airport, the Maine Marine Trade Association and the Maine Chamber of Commerce, to Maine Rivers, the Natural Resources Council of Maine, the League of Women Voters, and the Maine Rural Water Association. Also invited were effected governmental agencies and officials – the Maine Department of Transportation, the City of Bangor, the State Fire Marshal's Office, the Maine Drinking Water Program, and Representative Saviello of District 90 and an environmental manager for International Paper Company. Two meetings of the focus group were held on November 1 and December 6, 2005 in Augusta. The first was a daylong meeting and the second was half a day in length. A total of 25 individuals were invited, representing 21 organizations and governmental entities (not including DEP). Both meetings were fairly well attended with 18 and 15 attendees, respectively, other than DEP staff.

In addition to using the focus group meetings and discussion as a means of obtaining input into this report, the Department also circulated a draft for review and comment to members of the focus group.

In order to provide the focus group with basic information on the issue, the Department assembled relevant background and historical information needed for a meaningful

discussion. Since we are often asked what other states require by the regulated community and the Legislature, the Department first undertook a survey of the oil discharge/spill reporting requirements of other selected states and of the U.S. Environmental Protection Agency. A report was prepared of the oil spill reporting survey's findings, which was then shared with the focus group; a summary of which is presented later in this report. The Department also undertook a review of the State's statutes and regulations for the reporting of oil discharges, including those of the Maine State Fire Marshal's office. A summary of Maine's existing statutes and regulations was also prepared. Also provided was a prior unsuccessful bill to change the State's oil discharge reporting statute by Representative Saviello. This was one of two such previous legislative bills. Also provided were data from Department oil spill reporting records.

Department staff also reviewed existing Department procedures using memorandums of agreement (MOAs) with a small number of interested industrial facilities and other larger entities in Maine which provided these facilities with an alternate means of reporting smaller oil discharges, while ensuring the discharge was promptly cleaned-up. A typical example of a MOA and a list of participating industries and other members of the regulated community were shared with the focus group. These agreements are based on facility specific reviews of their oil discharge prevention efforts and spill response capabilities.

2. Overview of Existing Maine Statute and Regulations Governing Oil Discharge Reporting

Before one can understand Maine's oil discharge and spill reporting requirements, you must first understand the baseline - that any discharge of oil is prohibited by Maine statute and has been since the 1970s (38 MRSA, §543). By "discharge" the statute means "any spilling, leaking, pumping, emitting, escaping, emptying or dumping" of oil. Spills are only one type of oil discharge. Included in this prohibition of oil discharges, are discharges to sewers (Appendix F) and spill containment structures like dikes. However, Maine's existing oil discharge (spill) reporting requirements vary somewhat with the source of the discharge. Surface spills onto impervious surfaces at underground oil storage facilities (e.g. many gas stations) may be reported differently than oil discharges from all other sources, including above ground storage tank (AST) facilities, oil transportation and handling accidents, and vehicle accidents.

There are specific requirements for reporting discharges at UST facilities, and AST facilities permitted by the State Fire Marshal's Office, as described below. In addition, oil terminals must report oil discharges within two (2) hours by telephone with a written follow-up report.

However, contrary to common belief, there is no explicit statutory requirement to report oil discharges from other sources, regardless of the volume or location spilled. The party responsible for the discharge must, however, promptly clean-up the discharge to the satisfaction of the Commissioner of the Department. If an oil discharge is reported to the Department within two (2) hours of discovery, and promptly cleaned-up, the responsible party enjoys a statutory exemption (38 MRSA, §550) from a civil penalty for having violated the oil discharge prohibition in section 543. This "carrot and stick"

approach to encouraging oil discharge reporting is unique to Maine. Understandably, this requirement over the years has often been interpreted by the regulated community and Department staff to create an implied obligation to report spills. How can the Commissioner oversee a cleanup unless the discharge or spill is reported?

Failure to report a discharge from an AST facility carries other ramifications beyond a potential of a civil penalty by the Department. Chapter 34 of the regulations of the State Fire Marshal in the Maine Department of Public Safety, "Rules and Regulations for Flammable and Combustible Liquids", require reporting of discharges within two (2) hours. Failure to do so leaves a responsible party open to enforcement action by that agency. In addition, the costs of the clean-up and third party damage claims resulting from discharges from AST facilities, ranging from home heating oil tanks to gasoline retail and bulk storage facilities may be paid from the Maine Ground Water Oil Clean-up Fund upon the owner/operator applying for such "pollution liability insurance" following a discharge incident.[1] If the discharge is not reported promptly, a $10,000 supplemental deductible is charged the responsible party in addition to the standard per incident deductible.

UST facilities must report discharges and leaks within 24 hours of discovery. A leak being a discharge from a tank or piping of 0.1 gallons per hour or greater. However, vehicle overfills and other surface spills at UST facilities of 10 or less gallons to an impervious surface (and not reaching surface water or ground water) and cleaned-up within 24 hours may instead be "reported" by maintaining a log of such spills at the facility and making the log available to Department staff and State certified inspectors (38 MRSA, §564.2-A, and Chapter 691, section 5.D.13). In addition UST facilities storing motor fuels or used in the marketing and distribution of oil (e.g. bulk plants) must also report "indications of a possible leak or discharge of oil". These include such indicators as unexplained daily inventory discrepancies of more than 1% throughput, detection of oil in a monitoring well, failure of tank or piping tightness tests, triggering of leak detection equipment, the presence of water in a tank or piping, and evidence of oil in the soil on and near the premises. No similar reporting requirements apply to AST oil storage facilities, except for those facilities with underground piping installed since 1991.

As required by Chapter 600 of the Department's regulations, oil terminals must report oil discharges by telephone within two (2) hours of discovery. This report is then followed by a more detailed written report to the Department within 10 days.

3. Current Use of Memorandums of Agreement by the Department

The Department has in the past entered into Memorandums of Agreement (MOAs) with 18 industrial or governmental facilities with the objective of reducing the number of small surface discharges/spills to which Department response staff needed to respond while still ensuring they were adequately remediated and tracked. The parties to these voluntary MOAs ranged from paper and lumber mills, other manufacturing facilities to shipyards and energy production facilities (see Appendix E for list and sample MOA).

[1] The cost of remediating an oil discharge at a marine oil terminal is not covered by the Maine Ground Water Oil Clean-up Fund. All other AST facilities are eligible. See eligibility criteria for fund coverage in 38 MRSA, §568-A

The 18 MOAs were developed over the years in very much a similar manner and with similar terms. In each case, the facility's spill containment and emergency response and clean-up capabilities were evaluated, often by site visits by Department response personnel. In return for assurances of spill containment and prompt clean-up, the Department used its enforcement discretion and allowed that discharges of less than 10 gallons be reported via a signed log, which in turn was available for inspection and submitted to the Department annually.[2] This alternate discharge reporting mechanism is the same as that required in statute for UST facilities. Each MOA is signed by a senior manager of the facility and either the Commissioner or the director of the Bureau of Remediation & Waste Management, as is the case with other contracts.

In the discussions of the focus group, the question of the enforceability of these MOAs was raised. Upon consultation with the Department of the Attorney General, the Department verified its understanding that the terms of the MOAs are indeed enforceable. A violation of the MOA would most likely be pursued as a violation of the relevant underlying oil statute. No enforcement actions have been necessary to date. A sample MOA with a paper manufacturing company may be found in Appendix E.

The Department's entering into MOAs with various Maine industries and other large institutions was discussed at length at the focus group meetings. A major concern of a number of the group's members was the lack of public knowledge of these MOAs. Also there was considerable concern that these agreements were developed without a public process for input, either into the process by which the eligibility criteria were developed or in the terms of the individual agreements. Likewise, concern was expressed because the logs of spills were not readily available to the public for inspection, despite being public information. As a consequence of these concerns, the Department placed a temporary moratorium on the negotiation and approval of new MOAs until this report has been submitted to the Maine Legislature and any action on it was concluded. Following public notice, existing MOAs which have or will terminate in the near future will be temporarily renewed.

The Department solicited the viewpoints of those companies and governmental entities with which it has a MOA governing oil discharge reporting. All parties expressed their general satisfaction and that the MOA worked well. Most often noted was that the MOA allowed them to clean-up a discharge, and record it without a disruption to their operation while waiting for DEP personnel to arrive. Most incidents were described as small, usually less than one (1) gallon.

4. Other State and Federal Oil Discharge/Spill Reporting Requirements

As a first step in this review, the Department staff conducted a survey of 12 states and the U.S. Environmental Protection Agency (EPA) regarding their oil spill reporting

[2] The MOA with Interface Fabrics of Guilford, Maine is the one exception. This agreement includes oil spills up to 50 gallons if they are entirely captured within impervious secondary containment. 10 gallons or less is the cutoff for other discharges.

requirements, then comparing them to Maine's. The following is a summary of that survey. The questionnaire utilized is found in Appendix B.

Survey Method:
Department staff compiled a survey of 10 questions pertaining to requirements for reporting oil spills at AST and underground storage tank (UST) facilities. The survey was sent to the EPA Region I and the following selected states: California, Connecticut, Indiana, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Texas, Vermont and Wisconsin. The survey was not intended to be representative of all states. The Department was interested in the reporting requirements of other New England and Northeast states along with a diverse mix of other states across the country. Department staff received completed surveys from all of these states except Indiana, New Jersey and Texas. Representatives from Indiana and New Jersey declined to complete the survey, instead referring Department staff to their respective state's statutes regarding oil spill reporting. Consequently, the surveys for these two states were actually completed by the Department based upon DEP staff's review of the referenced statutes. No response was received from the State of Texas, largely due to higher priorities in dealing with the aftermath of Hurricane Katrina. California's response included their UST program requirements, but no response was received from their AST program.

Summary of Survey Results:
For the most part, the agency to whom spills are to be reported was the state's Department of Environmental Protection (or equivalent agency), and the National Response Center at the federal level. California's UST program also includes local reporting requirements. Ohio requires notification of the county Local Emergency Planning Committee (LEPC).

With the exception of Maine and Ohio, reporting requirements did not differ for AST versus UST facilities. Maine has more lenient spill reporting requirements for UST facilities in that certain oil spills at UST facilities that are less than 10 gallons to an impervious surface and that are promptly cleaned up need only be logged and not reported by telephone. Interestingly, Ohio has more stringent reporting requirements for UST facilities in that UST facilities in that state are required to report any leak, while AST facilities must notify only if the spill is more than 25 gallons, goes off-site and/or causes a sheen on a waterway.

Reportable quantities for petroleum ranged from no reportable quantity up to 1000 gallons. Four states (California, Connecticut, New Jersey and Rhode Island) had no de minimus reporting quantity, i.e., all spills must be reported. In Maine, there is a de minimus quantity of 10 gallons at UST facilities under certain circumstances. Maine's de minimus quantity does not apply to AST facility spills. Reportable quantities for the other states having de minimus quantities are: 1 gallon (Wisconsin - gasoline only), 2 gallons (Vermont), 5 gallons (New York & Wisconsin - other than gasoline), 10 gallons (Massachusetts), 25 gallons (New Hampshire & Ohio) and 1000 gallons (Indiana). For all of these states, other conditions apply in order to be exempt from reporting. Typically, the spill must: be successfully contained, cleaned up within a specified time frame (2 – 24 hours), not impact surface (and in some cases) ground waters, be to an impervious surface, and not cause damage to the environment or human health. At the federal level, reporting is required for any size spill that causes or threatens to cause a sheen on navigable water.

Except for Wisconsin and Ohio, the type of petroleum product spilled does not affect spill reporting requirements. In Wisconsin there is a lower reportable quantity for gasoline (1 gallon) compared to other petroleum products (5 gallons). Ohio is unique in that a crude oil spill up to 210 gallons on an oil production site that does not cause sheen on surface water is not reportable, while the reportable quantity for refined petroleum products in that state is 25 gallons. The standard for crude oil is not applicable to Maine since Maine, unlike Ohio, does not have any production facilities.

For most states surveyed, discharges into secondary containment structures are still considered "spills" and subject to the same state reporting requirements that apply to spills outside of containment structures. The three exceptions are Ohio, New Hampshire and Wisconsin. In these states discharges to secondary containment are not considered to be a "spill" unless they reach a storm or sewer drain (Ohio), seep into ground or surface waters (New Hampshire) or there is an unusual circumstance that would result in damage to human health or the environment (Wisconsin). At the federal level, discharges into secondary containment are not reportable if such discharges would not threaten surface water.

Three states distinguished between discharges to impervious vs. pervious surfaces at least for some spills: Maine, New Hampshire and Wisconsin. Maine has a reporting exemption for certain spills at UST facilities to impervious surfaces. In New Hampshire, a spill up to 25 gallons on an impervious surface that will not seep to ground or surface water is not reportable, while spills on pervious surfaces where they could reach groundwater would be reportable even if under 25 gallons. Wisconsin generally does not consider a discharge to an impervious surface to be a reportable spill if it will not damage or threaten human health, safety or the environment.

Except for New Jersey, having an SPCC plan in place made no difference in spill reporting requirements. In New Jersey, a discharge may be exempt from reporting requirements if the facility has an SPCC plan in place, the discharge has not migrated off site or entered any waters of the State, the discharge has been contained and cleaned up within 24 hours, and records of the spill and response are kept for three years.

Allowed timeframes for reporting a spill range from "immediately" (sometimes interpreted as within 15 minutes) to 24 hours (for UST facilities in California and Maine). Indiana, New York and Massachusetts have a 2-hour reporting timeframe. Maine has a 2-hour reporting timeframe for all discharges other than those at UST facilities (to quality for an exemption from civil penalties). Two of the states with "immediate" reporting requirements, Indiana and Vermont, allow some flexibility when reporting immediately would delay actual response activities.

Most states and the EPA can assess fines and penalties for failure to report in accordance with requirements. In some cases, failure to report can also be a criminal violation. In Maine and Massachusetts, failure to report a spill can also increase the facility owner/operator's share of clean-up costs. None of the other states surveyed had any statutory or regulatory language similar to Maine's statute under 38 MRSA § 550. Under this Maine statute a responsible party is not subject to any fines or civil penalties for an illegal discharge if they report the spill within two hours, promptly clean up the spill, and reimburse the Maine DEP for any funds from the Maine Coastal and Inland Surface Oil Clean-up Fund used to clean up the spill.

Survey Summary Discussion:
Requirements for reporting an oil spill vary widely from state to state and at the federal level. Requirements that vary the most are: reportable quantities for reporting oil discharges and the conditions under which a spill may be exempt from reporting. However, in most cases having an SPCC plan in place, or having a discharge into secondary containment, does not affect spill reporting requirements. There is also some consistency among states and the EPA in regards to allowed time frames for reporting spills: with the exception of California all states and the EPA are as stringent, or more stringent, than Maine.

In the course of discussing the above results with focus group members, Michael Barden of the Maine Pulp and Paper Association indicated that they had contacted south eastern states, whose paper mills their member mills must compete against. These states reporting requirements were described as similar to those surveyed by the Department.

5. Summary of Reported Oil Discharges at AST Facilities

Since the focus of this report is on whether changes are appropriate in the reporting of discharges from above ground oil storage facilities and associated oil use and handling, it is necessary to have an understanding of the dimensions of discharges at AST facilities. These include the frequency, volume and remediation cost of oil discharges.

Discharges from ASTs is a growing source of new oil pollution clean-up sites facing the Department. In contrast, discharges have been decreasing and becoming less costly at UST facilities as a result of 20 years of improving regulation, and the investments in new and replacement facilities by Maine's oil retail/distribution industry. The single largest source of AST discharges are home heating oil tank systems. On-going efforts by the Department to fund the replacement of non-conforming tanks and past upgrades in the installation and other regulatory standards of the Maine Oil and Solid Fuel Board have not yet had sufficient time to impact the estimated population of 415,000 such tanks. Hopefully these pollution prevention initiatives will ultimately result in a decrease in the Department's remediation workload. But progress is being made with Maine's home heating oil tanks. The one sector where little progress has yet been made toward preventing discharges are other AST facilities, such as motor fuel retail and distribution, bulk plants, government/school facilities, industrial (manufacturing) facilities, and large commercial AST facilities. These facilities were of primary interest to the focus group. As stated in the report's introduction, the Department therefore refined the focus of this evaluation to the reporting of discharges from these AST facilities, and the data presented here is likewise limited to reported discharges from this same subpopulation of AST facilities.

Table 1 below presents a breakdown of the 1,801 reported oil discharges at AST facilities statewide for the ten year time period of 1995 to 2004, inclusive.[3] Discharges

[3] Discharges from the 18 facilities with which the Department has had a MOA and report small discharges by way of submitting an annual log, are not included in Tables 1-4. Consequently discharges of 10 or less gallons are slightly under represented in the figures presented in these tables.

are broken down by their volume when known. In 11% of cases, the volume of the discharge is not known. Overall, the largest percentage of discharges is smaller volume discharges, 10 or less gallons, comprising 41% of the total. Discharges of 11-50 gallons accounted for another 24%, or 65% of all discharges were 50 gallons or less.

Table 1
Volume Breakdown of Reported AST Oil Discharges: 1995 – 2004
(Not including marine oil terminals & home heating oil tanks)

Discharge Volume (gallons)	Less than or equal to 10	11-50	51-200	Larger than 200	Unknown	Totals
No. discharges	734	429	252	180	206	1,801
Percent of total	41	24	14	10	11	100

The distribution of the number and volume of discharges for different types of facilities that store, handle and use oil, is shown in Table 2. The number of oil discharges reported over this 10 year period, ranged from 42 (2%) at commercial marinas and airports to 673 (37%) at commercial facilities (e.g. stores, fleet fueling facilities, and other commercial businesses). Industrial (manufacturing) facilities in Maine reported 185 discharges or approximately 10% of the total oil discharges. Bulk plants storing and distributing oil account for 19%. Service stations are responsible for approximately seven (7) percent of the total reported discharges.

TABLE 2
BREAKDOWN OF AST OIL DISCHARGES BY SOURCE
(Not including marine oil terminals or home heating oil tanks)

Source Facility	Discharge Volume (gallons) 10 or less		11 - 50		51 – 200		200+		Unknown		Facil. Ttl	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Bulk plants	95	*27*	108	*31*	46	*13*	45	*13*	53	*16*	347	*19*
Service stations	56	*43*	32	*25*	13	*10*	10	*8*	19	*14*	130	*7*
Marinas Airports, etc.	18	*43*	10	*24*	3	*7*	5	*12*	6	*14*	42	*2*
Industrial	63	*34*	48	*26*	24	*13*	37	*20*	13	*7*	185	*10*
Commercial	293	*44*	139	*21*	123	*18*	45	*7*	73	*10*	673	*37*
Govrnmt./Schools	127	*49*	56	*22*	26	*10*	25	*9*	23	*9*	257	*15*
Other facilities	82	*49*	36	*22*	17	*10*	13	*8*	19	*11*	167	*10*
Grand Total											1,801	100

When looking at the volume discharged, however, the largest (more than 200 gallons) oil discharges most often occurred at industrial facilities – 20% of discharges. Industrial facilities along with commercial facilities and bulk plants most frequently suffer discharges exceeding 50 gallons of oil – 33, 25 and 26 percent, respectively.

The volumes associated with the above discharges generally followed a similar frequency distribution trend – that is, the largest proportion of spills are smaller in volume, 10 or less gallons(41 % of oil discharges). Larger volume discharges (more than 50 gallons) occur less frequently (24 % of discharges). This is the case for most facility types. For example, 44% of discharges at commercial facilities which reported the most discharges are 10 or less gallons in size. At marinas and airports, which reported the fewest discharges, smaller discharges accounted for the largest share, 43% of all those reported. Service stations also reported a high percentage (43%) of small volume discharges and far less larger discharges (18%). The frequency of discharges, however, at industrial facilities which were often at the heart of the focus group's discussions, were somewhat different in that they were more uniformly distributed – with large percentages of both smaller (10 or less gallons) and larger (over 50 gallons) volume discharges (34 and 33 percent, respectively

Looking at the cost to remediate discharges of different volumes tells what appears to be a fairly simple story – relatively few discharges are costly to remediate, and the larger the discharge the more it costs to remediate (Table 3). The Department spent a total of $7,347,000 from the Maine Ground Water Oil Clean-up Fund (GWF) and the Maine Coastal and Inland Surface Oil Clean-up Fund at AST facilities over the 10 year time period of 1995 to 2004, inclusive. This figure, of course, does not include the costs incurred by the parties responsible for the discharge, including deductibles under the State insurance program and ineligible costs.[4] It also does not include natural resource damage costs. A small proportion (290 or 16%) of AST discharges account for the State's remediation workload and budget expenditures. Of the total $7.3 million, 70%

[4] See eligibility criteria for fund coverage in 38 MRSA, §568-A

was spent on discharges in excess of 50 gallons while discharges and spills of 10 or less gallons cost less than two (2) percent of the total GWF remediation expenditures.

Table 3
State Expenditures to Remediate AST Oil Discharges
(Does not include marine oil terminals and home heating oil tanks)

Volume (gallons)	10 or less	11 – 50	51 – 200	More than 200	Unknown	Totals
No. discharges	26	71	93	53	47	290
Cost ($)	$152,700	$361,100	$2,270,300	$2,829,400	$1,734,000	$7,347,000
% of Total Cost	2	5	31	39	24	100
Avg. Cost/Discharge	$5,873	$5,086	$24,412	$53,385	$36,894	

The Department's 20+ years of experience overseeing and paying for soil and ground water oil remediation sites indicates that the volume of the discharge is not the only important variable in determining the public health and environmental risks associated with a discharge. First, does the discharge reach bare soil or another pervious surface where it can be transported to ground water or surface water, or where vapors may move through the soil to nearby basements or utility conduits? Other important factors are the type of product and the environmental sensitivity of the location of the discharge. The components of gasoline, like benzene and MTBE, are more mobile, particularly in soils, than higher viscosity heating oils. Combined with the greater toxicity, gasoline poses a greater public health and environmental exposure risks. Under the varied geological conditions found in Maine, like shallow to bedrock soils, fractured bedrock or sandy soils; diesel fuel, kerosene, and #2 heating oils have been documented to travel substantial distances.[5] All have contaminated drinking water supplies in Maine. All oils, including heavy oils used in boilers at industrial facilities, partition with components going into solution once reaching ground water or surface water. Even #6 oil, one of the most commonly used heating oils at industrial facilities in Maine, has been found to include as much as 30% water soluble (polar) compounds.[6] Polyaromatic hydrocarbons (PAHs) are also found in heating oils. Some of this class of compounds poses substantial public health risks as well as risks to some biota in surface waters. They are to some extent mobile and should not be ignored or viewed as benign. Proximity to surface water bodies or drainage ways to surface water bodies are an obvious factor as well. The Department has worked on remediation sites where it was the cumulative, repeated discharge of the more viscous, heavy oils that resulted in a free product layer on the groundwater table and pollution of a stream, river, or lake. Some of what Department staff see in the field is reflected in the distribution of remediation costs when they are viewed more closely (Table 4).

[5] Maine Dept. of Environmental Protection, Historical Oil Contamination Travel Distances in Ground Water at Sensitive Geological Sites in Maine, April 30, 2002, 7pp..
[6] TPH Criteria Working Group Series, Composition of Petroleum Mixtures, Vol. 2, Amherst Scientific Publishers, May 1998.

Table 4
Breakdown of AST Oil Discharge Remediaton Costs by Source
(Not including marine oil terminals or home heating oil tanks)

	Discharge Volume (gallons)											
	10 or less		11 – 50		51 – 200		200 or more		Unknown		Facility Total	
Source Facility	**Cost**	**%**	**Cost**	**%**	**Cost**	**%**	**Cost**	**%**	**Cost**	**%**	**No.**	**%**
Bulk plants	$250		$1,680		$705,880		$229,870		$327,140		$1,264,820	*17*
Service stations	$62,840		$5,790		$941,660		$1,671,450		$260,660		$2,942,400	*40*
Marinas Airports, etc.	$39,190		$6,790		$26,900		$150		$1,140		$73,780	*1*
Industrial	$100		$8,280		$39,830		$216,110		$371,030		$635,350	*9*
Commercial	$34,070		$67,730		$387,640		$426,960		$729,220		$1,645,620	*22*
Govrnmt./Schools	$16,650		$74,500		$118,940		$153,030		$15,870		$378,990	*5*
Other facilities	$30		$196,380		$49,470		$131,790		$28,970		$406,640	*5*
Totals	$152,740	*2*	$361,150	*5*	$2,270,320	*31*	$2,829,360	*39*	$1,734,030	*24*	$7,347,600	*100*

Of the $7.3 million spent on remediation by the Department at AST facilities, the largest share (40%) resulted from motor fuel discharges at service stations, while only accounting for 7% of the total number of discharges reported. Remediation of service stations also cost the greatest on average, approximately $23,000 each. Larger volume (over 50 gallons) discharges accounted for most of these expenditures, approximately $2.6 million. However it should be noted that discharges of 1 or less gallons cost over $60,000 to address – small spills should not be ignored.

Commercial facilities accounted for the second most expensive remediation sites, approximately 22% of the State total. These sites averaged about $2,400 each, substantially less than service stations. Again the larger volume discharges were the most expensive, but like service stations, some smaller discharges under the right site conditions result in expensive clean-ups. Remediation from bulk plant discharges, despite their large number, accounted for 17% of expenditures. Many bulk plants are saved by their location in industrial parks or urban areas where ground water is not used and doesn't flow directly to a surface water body. The average discharge clean-up from a bulk plant cost approximately $3,600. More expensive bulk plant discharges often involve surface water pollution.

Industrial facilities accounted for expenditures from State funds of about $635,000 on remediation of oil discharges, accounting for 9% of the total. The average State remediation expenditure at an industrial oil discharge is approximately $3,400, similar to that of bulk plants. Interestly, the most costly remediation projects at industrial facilities are those where the volume of the discharge is not known ($371,030).

6. Summary and Discussion of Focus Group Suggestions

Summary

Opinions and suggestions from the focus group were as varied as the members and their interests. Reaching a consensus was never the goal of the focus group meetings, nor would it have been practical given the timeframe and reporting deadline. Meeting agendas, attendee lists, and notes from both the November 1 and December 6, 2005

meetings are presented in Appendix G. At the conclusion of the second meeting, parties were invited by the Department to provide any specific proposals and any additional comments they wished to make. A number of additional suggestions and comments were provided by e-mail. They too are available in Appendix G. Comments from the focus group members after reviewing a draft of this report are also found in this Appendix.

There were several areas of common understanding that were expressed by a sizeable number of the members.

1) Any variation from the current oil discharge reporting statutes, such as establishing a possible de minimus oil discharge reporting volume, should be implemented on a facility specific basis, so that site specific variables important to the prevention and containment of oil discharges, the extent of their public health and environmental risk, and their prompt clean-up can be taken into account.
2) The use of memorandums of agreement between the Department and individual members of the regulated community is probably the most workable implementation mechanism.
3) The MOA development process should be encoded in rules or statute, establishing a clear set of eligibility criteria, and ensuring that the public is informed and provided with a means to participate.
4) Establishing a de minimus reporting volume such that small discharges need not be reported immediately to the Department's response personnel would make more efficient use of the time of the Department's responders.

A number of individual members of the focus group offered suggestions for statutory changes. Some are fairly comprehensive; others are fairly specific and limited in scope.

Representative Saviello, who also is an environmental manager at International Paper Company's mill in Jay, Maine, presented a proposal during the focus group meetings. The basic concept of Representative Saviello's proposal includes elements from a previous bill of his (Appendix D). Limited to AST oil storage and handling facilities and discharges of petroleum products other than gasoline, the concept is for a three (3) tiered oil discharge reporting scheme.

1) The first, or baseline tier, would be the current statutory regulatory requirements: report all oil discharges regardless of volume within two (2) hours, clean-up promptly, and in return receive protection from civil enforcement penalties.
2) The second and third tiers substitute the maintenance of an oil discharge log by the facility for reporting of discharges by telephone, while maintaining that oil discharges be cleaned-up promptly.
3) The second tier would create a de minimus reporting volume of 10 or less gallons.
4) The third tier would provide a de minimus oil discharge reporting volume of 50 or less gallons for oil discharges meeting the following criteria:
    a) AST facility has licensed on-site wastewater treatment plant and current SPCC (Spill Prevention, Control and Countermeasures) plan.

b) Discharges are to an impervious surface; do not reach bare ground, ground water, or surface water; and are not located on a "sensitive site"[7].
c) Discharges would be cleaned-up within 24 hours and recorded in a log maintained by the facility.
d) Discharges to the sewer system of the on-site treatment plant would not require clean-up or recording on the discharge log[8].
e) Oil discharge logs would be submitted periodically to the Department and made available during inspections.
f) The above changes would be implemented through statutory changes which would authorize the Department to enter into MOAs with interested facilities meeting the above criteria. Notification of the public would be part of the MOA process.

The Maine Pulp and Paper Association (MPPA), represented by Mr. Michael Barden, presented a proposal with some similarities to the Saviello proposal, but also with a few differences. The most significant differences being a larger de minimus reportable oil discharge of 200 gallons and not excluding spills to bare soils. Key elements of the MPPA proposal follow:

- This proposal would not apply to gasoline discharges, UST facility discharges, or discharges from home heating oil tanks. The focus of the proposal is on oil discharges at AST facilities and inside buildings.
- Three options, or tiers, are part of the proposal, from which eligible facilities could choose.

1) Option 1: No change, report and clean-up all oil discharges as currently required to enjoy the exemption from civil enforcement penalties.
2) Option 2: Exemption of reporting of oil discharges 10 or less gallons in volume. Further details and eligibility prerequisites are presented below.
   a) Option would apply to discharges inside a building, into secondary containment, or onto bare ground.
   b) Discharges would be cleaned up within 24 hours and wastes disposed of in an appropriate manner.
   c) A log of discharges would be maintained by the facility and provided to the Department on a regular frequency (e.g. quarterly, annually, etc.).
   d) These exemptions would only apply to a particular facility and its owner entering into an MOA.
   e) MOAs would have time limit (expiration date) and may be renewed. Five years was suggested.
   f) Applications to the Department for an oil discharge MOA would also be filed with the municipality and public notice would be provided.
   g) Department would conduct facility inspection prior to approving MOA.
3) Option 3: Exemption of reporting of oil discharges up to 200 gallons meeting the following:
   a) The facility has the required SPCC plan and a properly trained and equipped hazardous materials response team.

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[7] Sensitive areas discussed in the focus group included significant sand and gravel aquifers, locations in close proximity to private and public drinking water supply wells, and source water recharge areas of public wells.

[8] Mr. Saviello estimated that the IP Jay treatment plant treats approximately 200 gallons of oil on a typical day from incidental discharges. It should be noted that oil discharges to sewers are included in the prohibition found in 38 MRSA, subsection 543.

b) Oil discharges are either cleaned-up in 24 hours; or the oil is collected and processed by an on-site licensed waste water treatment plant or a local publicly owned treatment works (POTW) where the discharger's facility's (usually a manufacturing facility) waste water makes up at least 80% of the total effluent discharged to the receiving water body[9].
c) The wastewater throughput capacity of the treatment plant must be at least five (5) million gallons per day (MGD).
d) MOAs would have time limit (expiration date) and may be renewed. Five years was suggested. MOA is specific to facility and its current owner.
e) Application and approval process, and public notice are the same as in Option 2.

Other participants in the focus group made proposals in the areas of de minimus oil discharge reporting. Scott Collins, representing the environmental consulting firm of St. Germaine & Associates of Westbrook, Maine suggested that for their clients a de minimus reporting volume of one (1) gallon would provide significant regulatory relief, particularly for the many very small spills that can easily be cleaned-up. The City of Bangor's environmental manager on the other hand suggested an across the board de minimus oil discharge reporting volume of two (2) to three (3) gallons, not limited to fixed facilities as had been the focus of the group's discussion. From Bangor's perspective it was difficult to get City public works, bus system and other employees to report spills to the Department regardless of their volume that occur all across the City on a regular basis. A de mininimus reporting volume would add credibility to the need to report and make it easier to get cooperation from City employees. Bangor International Airport officials supported this suggestion.

Mark Hyland, then acting director of the Department's Response personnel, questioned the ability many oil storage and handling facility personnel to accurately estimate the volume of a discharge. His comment was based on the experiences related to him from Department response staff which too frequently find that the initial report of a discharge significantly under estimates the volume actually spilled, as determined by the volume of oil that needs to be replaced. The Bangor POTW provided an example. An oil discharge to the Bangor sewer system was initially reported by the commercial business as approximately 20 gallons; upon investigation by a Department responder and POTW staff it was found to be over 200 gallons. Subsequent to the focus group discussions, interviews with senior response personnel verified this trend. An extreme example was a 1999 spill at a paper mill which the initial report to DEP was of a two (2) gallon spill. An updated report made two hours later indicated it was a 30 gallon spill. It was ultimately determined to be a 3000 gallon spill.

Discussion

The suggestions highlighted above and the overall discussions of the focus group raise a number of issues that warrant additional analysis and discussion. These include:

1) The oil discharge reporting process needs to be publicly transparent; and reports of oil discharges need to be available to the public.
2) If an oil discharge goes to a wastewater treatment plant unabated, is that alone good enough?

[9] There are two such POTWs which currently receive predominately industrial waste water, Hartland from Irving Tanning, and Madison Sanitary District from Madison Paper Industry. This was more often the case in other Maine municipalities in the past.

3) What degree of regulatory relief is achieved by the various suggested de minimus oil spill volumes?
4) Is an across-the-board de minimus discharge reporting scheme practical, and does it adequately protect the public and the environment?

It was quite well accepted among the focus group members as well as the Department representatives that any process by which oil discharges are reported to the Department be "publicly transparent". This includes the opportunity for public input into the development of any changes in the current statute and any alternative reporting process to be developed in the future by the Department at the Legislature's direction. The Department's current process lacks public involvement. The criteria by which the current 18 MOAs between the Department and various industries and other oil storage/handling facilities across Maine have been fairly consistent, but they were not developed with the input of the public. Likewise the public was not notified when the Department was considering such a MOA or once one was finalized. If MOAs are part of the oil discharge reporting process, a process for public input and notification should be developed, even if the statute is not changed. Discharges reported to the Department via telephone are available to the public for their review. Likewise, the Department should ensure discharges recorded on logs and submitted by the parties to MOAs are equally available to the public. Currently, that is not always the case.

In each of the paper company proposals above, an oil discharge to the facility's sewer system and treatment plant is presented as an acceptable option as the sole means of remediating an oil discharge.[10] Discharges at paper mills were represented as unavoidable, routinely discharging large volumes of oil daily (200 or more gallons per day at IP Jay) to the treatment plant. Is that an acceptable performance standard? What if a spill that is estimated as a 50 or 200 gallon spill may in fact be a 100 or 400 gallon spill or greater because of human error in estimating discharge volumes, is that an acceptable discharge to a treatment plant? The performance standard for a wastewater treatment plant is to prevent an oil sheen on the receiving water body. The MPPA provided the focus group with a copy of a 2003 memorandum to MPPA from the consulting firm of Woodard and Curran estimating that a typical paper mill's treatment plant could treat at least 250 gallons per day without creating an oil sheen floating on the discharge water (Appendix F). Department wastewater engineers who reviewed Dr. Woodard's memo and the other paper industry proposals point out, as Dr. Woodard also points out, that the design and capability of different industrial (not just paper mills) treatment plants to treat free product varies considerably (Appendix F). A number of industrial treatment plants do not have the clarifier capacity to serve as an oil water separator as assumed by Dr. Woodard. If you accept Mr. Woodard's estimate that a typical Maine paper mill's treatment plant can accept 250 gallons of oil per day without a sheen appearing on the receiving water, in mills such as IP Jay, that may mean the plant has in fact only capacity for a 50 gallon spill or less without producing a sheen. The other 200 gallons of capacity is being taken up by the daily, unabated incidental spills to the treatment plant.

Another weakness in the assumptions of the MPPA, Saviello, and the Woodard and Curran proposals is that they do not address dissolved phase petroleum hydrocarbon contamination that will inevitably result from oil discharges to an industry's wastewater. The biological treatment component of most industrial treatment plants in Maine

[10] As noted in the summary of Maine statute, such discharges are currently prohibited.

generally do not provide sufficient contact time for effective degradation or sorption of petroleum hydrocarbons that are in solution in the waste water. Even in the case of facilities that primarily use heavy heating oils (oils that must be heated during storage), polyaromatic organic hydrocarbons (PAHs), diesel range organics, and other petroleum compounds will pass through a treatment plant in solution to some extent. The real questions are what is the mass discharged, and what is the concentration in the effluent water following an oil spill. Because paper mills and other industrial facilities use considerable quantities of specialty lubricating oils in their machinery that contain high concentrations of heavy metals, some of these metals will go into solution as well, and will be discharged to the receiving water body among other "pass through" effluent components. Some hydraulic oils also contain benzene, toulene, ethylene and xylene (BTEX compounds). Hydraulic oils discharged from older pumps and machinery are still found to contain residual PCBs. At facilities storing and handling gasoline, the dissolved phase contaminated waste water will contain BTEX compounds, gasoline range organics, MTBE, and other volatile and semi-volatile organic compounds. The effluent sampling regime required by industrial wastewater discharge licenses for priority pollutants, including toxics, is generally conducted only once per year. These do include some parameters that would be indicative of petroleum hydrocarbons, however, lacking are such important analytical tests as diesel range organics or total petroleum hydrocarbons. Since there are no timely, relevant data on the concentrations of dissolved phase petroleum compounds in industrial treatment plant effluent discharges in Maine following oil discharges[11], it is difficult to say whether this is an acceptable environmental or public health risk.

Only attempting to prevent a sheen floating on a Maine river may be all that is required by federal regulations, but is that really adequate? The concentration of dissolved phase petroleum hydrocarbons could be as high as 10 -15 parts per million (ppm) total petroleum hydrocarbons, diesel range organics or gasoline range organics before a sheen is visible on the receiving water body. This standard certainly does not take into account dissolved petroleum hydrocarbons. The Department believes that the more appropriate goal should instead be to prevent oil discharges from occurring, and when they do occur, to minimize the volume reaching an industrial plant's sewer system and therefore potentially the receiving water. The representatives of the paper industry at the focus group meetings expressed their support for a very different goal and approach - to allow the unabated discharge of oil to a facility's sewer system, and to allow even larger volumes of oil to go to treatment plants before triggering a timely reporting requirement to the Department.

Relying on POTWs to treat oil discharges as a justification for a de minimus oil discharge reporting volume was generally agreed among by the focus group members as a poor idea. There are sound technical reasons for this. There are also equity issues. POTWs have little capacity to treat oil and vary considerably in their ability to handle oil without their treatment equipment and process being incapacitated. They are designed to treat municipal wastewater not petroleum hydrocarbons. Just prior to the second focus group meeting an incident in Skowhegan illustrated this point. A heating oil spill from an

[11] In one instance when post-treatment plant effluent was sampled by Department Response Services staff, following a 3000 gallon oil spill at International Paper's Jay mill in 1999, laboratory analyses found 356 ppb diesel range organics and 461 ppb total petroleum hydrocarbons. Although hardly conclusive, this one analysis does serve to illustrate the concern of dissolved phase petroleum hydrocarbons passing through a treatment plant.

unknown source made it to the storm sewer and the municipal treatment plant, damaging the plant and curtailing the treatment plant's operation for three (3) days. Even larger, more sophisticated systems like that serving the City of Bangor have been impacted. An oil discharge reported as a 20 gallon discharge but which was in fact much larger, did significant damage to the Bangor POTW's biomass treatment system. Another discharge or a larger discharge would have likely resulted in the incapacitation of the Bangor system. Oil spills are problematic in other ways for POTWs because of their large collection system. The oil accumulates in various components of the system, such as wet wells, and is often volatilized at pump stations to unhealthy concentrations for workers. Oil discharges to POTWs result in the POTW often incurring added costs. There is an inherent inequity in this situation where the burden of the cost of the discharge is shifted from the responsible party to the POTW. In the case of the incident in Bangor, the sludge was also contaminated by oil such that it was not acceptable for composting and had to be land filled as a special waste at a significant additional cost to the POTW. The oil discharge incident in Skowhegan cost the POTW $11,000 to have the plant's scum pit pumped out of oil contamination. Again the sludge had to be land filled as a special waste at a higher cost versus stockpiled and land spread on agricultural land. The unquantifiable social cost of course was that associated with the waste water discharge to the Kennebec River which did not meet permitted discharge standards.

The acceptability of oil discharges to bare soil was raised by the City of Bangor and the MPPA. Oil discharges to soil are adsorbed in large part by the soil particles. This capacity is a function of the physical properties of the soil such as particle size and mix, as well as simply its depth to bedrock or groundwater. The viscosity of the oil is a factor. A heavy heating oil as used by a power utility or an industry adsorbs more readily to the soil and migrates far shorter distances laterally and vertically than a more mobile product like gasoline, with more mobile and soluble components like MTBE or benzene. However a portion of any petroleum hydrocarbon will go into solution and migrate to groundwater under most geological site conditions found in Maine. Allowing discharges directly to soil to go unreported will likely result over time in groundwater contamination even from less mobile oils in less sensitive sites. This is especially the case where discharges may be in areas of private wells and to the subsurface such as in the scenario of a public works construction project. This would be inconsistent with the exception of 10 or less gallon spills from vehicle overfills at UST facilities, which may be logged after clean-up, if the spill is on an impervious surface (e.g. concrete pad, or asphalt parking) which allows for a more complete clean-up. Allowing discharges to all soils to go unreported will actually be more costly. Many small discharges may not be cleaned-up simply because they will not "look dirty enough", and the cumulative impact will ultimately result in oil saturated soils and a costly clean-up that could have easily been avoided by a telephone call to the Department and a determination if the site specific conditions dictated a clean-up and the degree of clean-up.

What should be the goals of changing the current statutes governing the illegal discharge of oil by exempting the reporting of discharges of a given volume? The Department feels they depend on the volume to be exempt. MPPA and Mr. Saviello of IP indicate the goal should be a reward for compliance with existing regulatory requirements, such as having a SPCC plan. Would it be a better use of limited Department response personnel to no longer require their presence at every oil discharge, especially the clean-up of smaller volume discharges where the risks are minimal so they can focus on discharges in sensitive settings with greater public health

and environmental risks? It could serve as further incentive to comply with existing regulatory requirements, such as having and following a SPCC plan, having a State Fire Marshal Office permit, providing secondary containment for tanks and underground piping, etc.. It could also serve as an incentive for facilities storing and handling oil to go beyond compliance with minimum regulatory standards, but to encourage oil pollution prevention by doing more to prevent discharges in the first place. As a reminder, Maine is the only state in the Department's survey of 12 other states whose statute already provides some incentive or reward for reporting and cleaning-up a discharge – a very generous exemption from civil penalties for having violated the State prohibition of the unlicensed discharge of oil to the environment.

7. Recommendations

The Department is not recommending a major change to Maine statutes. Instead the Department recommends a modest change to the current regulatory structure governing the reporting of some surface oil discharges or spills as a compromise of the desires of the regulated community while ensuring an adequate baseline of protection of public health and the Maine environment from oil discharges.

These recommendations only apply to fixed facilities; which store oil in above ground tanks (ASTs), or handle and use oil at such facilities. Our recommendations do not apply to underground oil storage tank (UST) facilities since they already enjoy an alternative surface spill reporting mechanism for small surface spills. They also do not apply to transportation spills; discharges to soil that may contaminate groundwater, or discharges to a surface water body.

In making these recommendations, the Department is attempting to further three objectives. The first is to provide the regulated community with additional incentives to comply with existing oil pollution prevention and mitigation requirements, including providing secondary containment for AST facilities and developing, maintaining and implementing SPCC plans. The second is to free Department response personnel from having to oversee the clean-up of smaller spills at selected, qualified facilities which are capable of containing and remediating such discharges. Thereby allowing the Department's limited response staff to focus on larger discharges and discharges in locations where the public health and environmental risks are greater. Lastly, these recommendations provide interested portions of the regulated community with considerable regulatory relief, and consistency between UST and AST facility requirements.

The Department is recommending an alternate method of reporting and clean-up oversight for individual oil discharges of 10 or less gallons at AST facilities and inside buildings. Such an alternative would be available on a voluntary basis and upon application to the Department as an exemption to the current requirements where all discharges must be reported to enjoy the civil penalty exemption. To be eligible, the facility and the oil discharge must meet the following criteria:

1) The facility has a current SPCC plan in place, certified by a Maine registered professional engineer.
2) The discharge is limited to a competent impervious surfaces (e.g. concrete or asphalt) or within impervious secondary containment; such as, concrete

secondary containment dikes, drip pans, or other structures and equipment designed and maintained to capture and contain oil spills.

3) Discharges in sensitive locations would not be eligible for this exemption. Sensitive locations would include sites where current and future drinking water supplies would be at risk - within 300 feet of private wells, within the source water protection area of a public drinking water supply or 1000 feet whichever is greater, and areas on a mapped significant sand and gravel aquifers. Also excluded would be discharges to environmentally sensitive locations, such as: coastal and freshwater wetlands; sand dunes; mapped significant wildlife habitat; lakes, rivers or streams; or other natural resources protected by the Maine Natural Resources Protection Act.
4) The oil discharge is cleaned-up within 24 hours of discovery, and any resulting debris is properly managed and disposed. Where the discharge is not detected prior to escaping to a sewer and clean-up is no longer possible, the discharge must be treated by a Department licensed industrial treatment plant such that the plant's license conditions are not violated. Discharges to industrial wastewater treatment plants not in compliance with the standards and conditions of their waste discharge license are not eligible for the proposed exemption. Discharges to POTWs are not eligible, except where the POTW is in compliance with its discharge license standards, acceptance of the oil is in accordance with local sewer use ordinances and is approved by the POTW, and best available pre-treatment of the wastewater for oil is provided by the responsible party.
5) The facility maintain a log in which all such discharges as above be recorded, including such information as the date and time of discovery of the discharge, the source and location of the discharge, the volume and product discharged, and the date and time of completion of the clean-up. Each log entry must be certified as to its accuracy by authorized management or supervisory personnel. Additional information comparable to that gathered by Department response personnel may be required.
6) The discharge log will be available at the facility upon request for inspection by Department staff or municipal officials.
7) Logs are to be submitted to the Department annually. In time the Department would anticipate that submissions are conducted electronically and thereby facilitating electronic entry into its database of discharges.

The implementation of the above exemption and alternative reporting/clean-up method for smaller oil discharges would continue to rely on facility specific memorandums of agreements (MOAs). However, unlike past MOAs, the overall process would be codified. The eligibility criteria, the general terms of such agreements, and their review process, including public notice would be spelled out in rules. The rules would be developed by the Department and presented for adoption to the Maine Board of Environmental Protection (BEP) under already existing statutory authority (38 MRSA, §546.4.B), and in accordance with the Maine Administrative Procedures Act.[12] This would allow for substantial public input into the development of the rule and the MOA approval procedure; including a transcribed public hearing, a written comment period, a written Department response to public comments (basis statement), an opportunity to

[12] The requirements of 5 MRSA, §8071 et seq., providing for legislative review of major substantive rules, do not apply to rules adopted to rulemaking authority granted before Jan. 1, 1996. Department rulemaking authority on spill reporting was enacted in 1969 and therefore do not require legislative review under the Administrative Procedures Act.

participate in the public BEP meetings, and the final decision to be made by the BEP versus the Commissioner or Department staff.[13] Several key elements of the rule would include notification of the public and the municipality, and a site inspection of the applicant facility by the Department to verify the adequacy of its containment and response capabilities, and that it is not a sensitive site. Parties to existing MOAs with the Department would need to reapply and meet the terms of the rule over a reasonable time period. Future MOAs would have a sunset date and the Department would have the clear ability to dissolve an agreement in the event of non-compliance with its terms. In addition, the Department would ensure that upon submission of a log, the reported discharges would be entered into the agency's discharge database where it would available via its website to the public along with all other reported discharges at any particular facility. The agreements themselves will also be made available to the public on the Department's website.

To ensure smooth implementation of the above recommended change in oil discharge reporting will require that it be reconciled with the current mandatory reporting requirement in the regulations of the Office of the State Fire Marshall for flammable liquid AST storage facilities. Not doing so will create confusion among the regulated community as to which requirement to follow, as well as to the correct amount of the deductible for a facility applying to the State for coverage of remediation costs associated with an oil discharge. The SFMO reviews applications and determines the deductibles for AST facilites suffering a discharge and seeking coverage of remediation costs from the Ground Water Oil Clean-up Fund. Coordination between the Department and the SFMO will be necessary to ensure a discharge reported and handled in accordance with a MOA is recognized by that office as a reported discharge under their regulations. This may require a rule change on the part of the SFMO.

Why is the Department not recommending larger volume reporting exemptions of 50 or 200 gallons as requested by the paper industry? First and foremost, we believe, given human nature and the nature of large organizations, such large exemptions will evolve over time into a culture within portions of the regulated community and its workforce that overlooks the seriousness of the occurrence of oil spills, rather than encouraging a culture to prevent oil discharges (e.g. "if we don't have to report it, then it must not be a problem to spill 200 gallons"). Then there is the question of how large a discharge would actually be exempt from current reporting procedures and DEP clean-up oversight given human errors in estimating their volume? With a possible margin of error of 100% or more, 50 and 200 gallon petroleum discharges are often in reality 100 and 400 gallon discharges, or greater. Certainly the same is true of a 10 gallon exemption; however the gallonage of the error is likely to be far less. A 100% error is 20 gallons. The argument made in favor of large de minimus oil discharge limits on the basis that the treatment plants of large industrial facilities in Maine can successfully treat such spills on a daily basis is unconvincing. Again, it encourages a culture of "if the spill goes down the sewer, everything is OK", versus encouraging discharge prevention. Industrial treatment plants licensed statewide by the Department were not designed to treat petroleum hydrocarbons. Any treatment is inadvertent. Plants vary considerably in their ability to use their clarifiers as substitutes for oil water separators to remove free product, as well as their capability to biodegrade or otherwise mitigate, other than by dilution, the dissolved phase petroleum compounds. The concentrations within plants' effluent water

[13] Unlike many State agencies where the final rule adoption is that agency's commissioner, MDEP rules must ultimately be approved by the Maine Board of Environmental Protection and its public members.

following a larger oil spill are not known. No relevant body of data was presented or available at the Department to answer the question of dissolved constituents and what concentrations are being discharged as a result of oil spills. Lastly, a much smaller de minimus reporting volume achieves what focus group members of the paper industry and others in regulated community indicated was their greatest desire, regulatory relief in the form of reducing the number of discharges that they currently report by telephone to the Department. A 10 gallon or less reporting exemption as recommended above would potentially reduce the overall number of discharges reported to the Department by telephone by 41%. Within the industrial and manufacturing sector (including paper mills), the decrease may not be as large, but still a substantial 34% reduction. A 50 gallon or less reporting threshold would permit 60% of oil spills at industrial facilities to be cleaned-up without any on-site Department supervision or approval. A de minimus reporting volume of 200 gallons, in turn, would mean paper mills and other industries would only have had to promptly report as little as 27% of historical discharges and spills, resulting in almost three-quarters (3/4) of discharges being cleaned-up without any Department oversight. In our judgment this would be a dangerous situation resulting in a lack of public confidence that discharges were being properly cleaned-up, while creating an environment ripe for the possibility of an inadequate clean-up by a responsible party to save on clean-up costs. If Maine adopted a de minimus reporting volume of 200 gallons, only Indiana and Ohio would have larger de minimus reporting volumes of the states surveyed.